

## REMARKS

This continuing application and preliminary amendment are in response to the Office Action mailed July 17, 2003 for the U.S. Patent Application No. 09/227,389. The preliminary amendment places the claims of the continuing application in the same condition as they are currently pending in U.S. Patent Application No. 09/227,389, now abandoned.

In the above-identified Office Action, claims 1-4 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,438,106 B1 issued to Pillar et al. (hereinafter referred to as "Pillar"). In addition, claims 5-22 and 24-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pillar in view of U.S. Patent No. 6,104,700 issued to Haddock et al. (Haddock) and claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Pillar in view of U.S. Patent No. 6,169,728 B1 issued to Perreault et al. (Perreault). Applicants respectfully disagree with the rejections in their entirety and respectfully submit that neither a prima facie case of anticipation nor obviousness has not been met.

### I. §102(E) REJECTION OF CLAIMS 1-4

Previously pending claims 1-4 were rejected under 35 U.S.C. §102(e) as being anticipated by Pillar. Applicants respectfully traverse the rejection and contend that a prima facie case of anticipation has not been established. However, claims 5, 6 and 8 have been placed into independent form and include limitations of claim 1. Claim 1 has been cancelled without prejudice. Claim 2 now depends on newly revised claim 4. Accordingly, Applicants respectfully request the rejection under 35 U.S.C. §102(e) be withdrawn.

### II. §103(A) REJECTION OF CLAIMS 5-25

Previously pending claims 5-22 and 24-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pillar in view of Haddock. In addition, claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Pillar in view of Perreault. Applicants respectfully

traverse these rejections in their entirety because Pillar does not constitute prior art and a *prima facie* case of obviousness has not been established. For brevity purposes, however, the grounds for traverse under the *prima facie* case of obviousness have not been presented but are noted for the record.

Herein, Pillar is considered as a prior art reference under 35 USC §103(a). However, 35 USC § 103(c) excludes a reference which may qualify as prior art under 35 USC § 102(e), (f), and (g) from being used as a prior art reference under 35 USC § 103(a). The text of 35 USC § 103(c) recites that “[s]ubject matter developed by another person, which qualifies as prior art under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” *See 35 USC §103(c), MPEP 706.02(I)(1)*.

Herein, both the subject matter associated with Pillar (the prior art reference) and the claimed invention were, at the time the invention was made, subject to an obligation of assignment to Nortel Networks Limited. Therefore, Pillar does not constitute prior art.

Since each of the rejections recite Pillar as the primary reference, Applicants respectfully submit that all of the above-identified §103(a) rejections have been traversed and withdrawal of the §103(a) rejections is respectfully requested.